

**Idaho Pesticide Management Plan
Rule Making Technical Workgroup**

**Minutes of the February 5, 2004 Meeting
Idaho State Department of Agriculture**

Gary Bahr called the meeting to order at 9:05 am.

In attendance:

Gary Bahr, ISDA
Rick Carlson, ISDA
Toni Mitchell, DEQ
Ken Neely, IDWR
Cathy Parsons, ISDA
Lynn Tominaga, Ground Water Pumpers Association
Sarah Weppner, IDHW
Garrett Wright, EPA Region 10

Gary discussed the timeline of activities and stated that he would be working to finalize all proposed sections of the rules during the coming week.

He noted that the committee still has four months to get through the work in order to have these rules prepared for 2005 legislative consideration.

A copy of the Wisconsin rules will be provided for committee review. These are probably the most comprehensive and complicated set of rules for a PMP. Gary suggested committee members review these rules for potential inclusion in Idaho's rules.

Gary reviewed changes in proposed rules to date:

Policy

The previous 04. subsection had been deleted, however, Technical Committee members suggested that it be added back but rewritten to reflect pesticides and omitting references to nutrients.

Legal Authority, Title, and Scope – no changes.

Confidentiality

Gary stated that in implementing PMP's (Subsection 1), we may be dealing with pesticides that could be restricted by the federal government and they may share the information/data with the state. This section ensures that such data would be held confidential if necessary. Also,

registrants would be more willing to share information and data if there were rules governing confidentiality. For example, studies by the registrant to evaluate potential leaching of a proposed pesticide would be covered by this rule.

Confidential Business Information (Subsection 2) would also be held confidential. Confidential Business Information will also need to be defined and it was suggested that ISDA use the definition already devised by EPA. Committee members suggested that Subsection 2 be revised with wording appropriate to the Public Records Act and Department of Agriculture policy regarding that Act.

Documentation, studies, and other information would have to be provided to the Department if needed for registering a pesticide.

Subsections (3) and (4) were deleted as unnecessary.

Research

This section would cover of BMP's (either voluntary or mandatory) and could open the doors to acquiring funding and information from the registrant that would assist in developing PMPs. Questions about the term promote vs. authorize or encourage arose; the committee recommended the term be changed to authorize. And, Subsection (1) was added:

- (1) The department shall require, as needed, additional research by the registrant.

It was noted that the department would have to have some way to control the quality of the data/research if it is required and it was recommended that only data from laboratories that have achieved "good laboratory practices" would be accepted. The purpose is not to lose the use of a pesticide but to make sure that ground water is protected.

The older a pesticide, the more registrants there are (with slightly different formulations, etc.). EPA has a data call in notice process requiring registrants to provide additional data and information. Questions arose as to whether or not EPA could share that information with the state. With this rule, the information could be more Idaho-specific, and/or may require Idaho study sites.

It was asked what penalties would be levied if information or data was not provided and Gary responded that that rule has not yet been developed. It was also asked if it would be appropriate to ask registrants to absorb the initial costs for additional research or more appropriate for them to be borne by the consumer/taxpayer. If they are born by the registrant the costs would be passed on to the taxpayer anyway. Garrett indicated that perhaps it would be more appropriate for the costs to be absorbed by the taxpayer. There were questions about adding a surcharge to each pesticide related to ground water to be allocated to research, or spreading the costs among all registrants to try to prevent problems. The state has a responsibility to double-check to make sure pesticides will not cause problems. The money from the surcharge could be used for additional monitoring.

Gary posted a table on the bulletin board outlining the results of pesticide sampling from 2001-2003:

SAMPLES	DETECTS	% OF REFERENCE DOSE			
		>ND-20%	20%<50%	50%<100%	>100%
667	275 41=Dacthal	265	3 All Dacthal	4 Different Pesticides	3 Different Pesticides

Additional testing is required when the range is at 50% to 100%. Gary noted that we are required to provide data to IDWR but due to delays with IDWR the data has not been put on the EDMS system. ISDA writes reports and places the data on the ISDA Water Program website.

Gary provided copies of labels and application information from a section 3 application for a pesticide registered for control of aphids on potatoes. The pesticide Actara, may pose ground water problems.

Committee members suggested that this section be redeveloped with more about utilizing thoughts provided. In some situations promote would be appropriate but in others we might have to require research. They also suggested that this section be looked at in conjunction with the response section.

Education

Committee members suggested that the title be changed to: Draft Procedures for Pesticide Water Quality Education Programs.

If fees are charged, the amount has to be in rule. They would also have to check with the Extension Service re. section 03 about where funds would be deposited and who would use them etc. The funds could be used for workshop materials, costs of facilities, and so on. It was asked how the law and rules are set up so they would be able to charge these fees and then pay the costs out of them.

Gary noted that this section would be the basic educational foundation so that we could prevent problems or provide information early to pesticide applicators. Incentives to attendees would be recertification credits. Other ways of providing information would be web-based programs, newsletters, press releases, and so on. The Division has two newsletters – “Updates” published by the Licensing and Certification Section and a new newsletter to be sent out by the Water Section. Information could also be provided through Home Depot, Wal-Mart and other stores that sell pesticides.

Committee members suggested that the details will be outlined in the Plan, not Rules. On-line information and classes would be appropriate and examinations could be conducted through libraries.

In response to a question about whether they should be talking about funding for an educational plan in the rules, it was suggested that they ask Scott McKinney for his input—ask if the fees would be appropriate along with spending issues.

Response Section

A question was posed to Region X in Seattle whether may or shall were appropriate in subsections 01. and 02. Garrett indicated that he has not yet had time to discuss this fully with staff but indicated that it was a general consensus with the individuals he has worked with so far that may be appropriate in Subsection 01. This would allow the department to effectively use staff and budget to deal with hundreds of detections at relatively low levels.

Garrett reported that one of his contacts stated (from his experience working with the superfund) that when funding gets tight, only those activities that are mandated (shall) get done.

Committee members suggested that the may or shall language be moved to the second Subsection level (a., b., c., etc.).

Garrett stated that at this level, the Department ought to be paying attention, ie, re monitor at this level and retest 400 wells ever year, if you get hits, re-monitor the well(s) more frequently.

EPA staff said that would also give the public assurance that the agency would continue to pay attention to this area.

Gary Bahr stated they have regional and local monitoring projects (275 wells are included in regional projects) and they do go back and retest every two years once the detection is made.

IDWR monitors 400 wells (all are tested for nitrates--1600 total) but they don't test for pesticides every year. We have helped with their funding but can't anymore. Gary stated they try to follow up on IDWR hits at above level 2 but can't really follow up at level 1. This would put the department on the hook for monitoring wells previously tested by IDWR. We would have to spell out exactly what the Department would do within ISDA. Garrett wants ISDA to do a general follow up on any pesticides detected, through mapping and assessment as listed in Level 1. Garrett will continue these discussions with EPA staff.

Committee members suggested that 01. a. be changed to:

01. a. Shall notify well owner of detection.

Committee members suggested that an additional a second sub-section be added:

01. h. Shall re-monitor the well on a regular basis.

Committee members recommended the following changes in Level Two Responses:

02. a. Shall implement actions_01. a.-g. in the area of pesticide detection.

b. May develop a chemical specific management plan per pesticide, unless already mandated through EPA Rule to do so.

c. May monitor additional domestic wells in the hydrogeological up gradient and down gradient area.

d. Shall continue regular monitoring at the regular frequency and consider increasing the frequency of monitoring.

Committee members agreed that e. was absolutely key—all subsequent actions should follow this rule.

e. Shall notify....

Committee members again suggested that “in an area” needs to be defined and Tonia suggested that staff look into the Safe Drinking Water Act definitions along with definitions in the Wisconsin materials for how they dealt with areas of impact or prohibition areas.

Gary indicated they have not designated a technique for designating an area that would require BMPs or more monitoring wells, etc. and they would have to have some flexibility in their approach.

03. Level Three Response

Committee members asked if the Department would install monitoring wells; if the Department would try to go after the responsible party; how to determine who is the responsible party. One of the mandated rules in these proposed rules is to try to determine the likely source (02. e), and committee members questioned what actions would be taken once that likely source has been identified.

Committee members asked if penalties would be assigned, and noted that the only hooks would be adding fees per registration and/or banning the pesticide. Garrett commented that he would like to discuss these fee issues with Scott McKinney.

Committee members also suggested that f. be revised:

03. f.. ~~Obtain~~ seek pesticide registrant financial and technical assistance.

Committee members discussed flipflopping b. and d. second level Subdivision and adding a new second level subsection that would allow the Department to add monitoring wells. Tonia also suggested adding definitions for domestic and monitoring wells.

Garrett suggested that instead of monitoring the groundwater, staff should monitor the BMP (if the BMP has previously been determined to be effective) so that less actual monitoring would be done and this should be put into policy rather than rule. It was also suggested that the department include in the Plan what will be tracked at each mandatory level.

It was pointed out that the current 03. c. and 03 h. proposed rules conflict. The department director already has the authority to establish a restricted area. A restricted area has to be established through rule but this can be done by emergency rules.

Public drinking water systems are governed by DEQ; the Department of Agriculture still regulates the use of pesticides but it is the responsibility of the provider to have safe water; and it was questioned if DEQ could go out and shut down a public drinking water system with the Department of Agriculture's approval—who has jurisdiction? Gary will look again at 03.c and 03.h. for linkages.

Level Four Response:

Committee members requested further clarification of 04.d., and suggested that it be split into two subsections:

04.d. Provide information on health effects per pesticide(s) detected.

04.e. provide information on attaining safe water.

The current 04. e. would then be renumbered.

Ground Water Standards Section

Gary noted that this section deals with what is a reference point.

It was stated that there are chronic and acute RfD's but the definitions would need to be clarified for child/adult and time based exposures. Health and Welfare has a team that provides information on levels of mercury, etc. in fish. Sarah will look for D1/D2 references.

Gary noted that “promulgated/non-promulgated” had been eliminated because everyone was confused by those terms but he left them in as he will need to meet with the Deputy Attorney General to determine enforceable standards. He also noted there are relatively few MCL's for pesticides. He would like this language to be consistent with language that is in DEQ groundwater rules and would refer to the DEQ standards for assigned MCL's – he doesn't want to list each MCL as they have been listed in the DEQ rules.

More work and research needs to be done on this section—they will need to either keep it generic or use narrative to flesh the section out. And they need to look at what other states have done.

Ground Water Monitoring Programs:

Committee members stated that other states or agencies should not be able to submit information for review or use by the department without some kind of cooperative agreement in place. We

should have separate agreements with other agencies and if MOU's listed, they would have to be specific.

The PMP is still a draft – these rules might make changes to plan so these are being run jointly. They are linked and ISDA will consider public input for the rules. EPA will be reviewing the Plan and provided their consensus while the rules are being considered by the legislature.

Gary stated that each public comment will initiate a review of that comment and a response made. When asked if those comments would be included, Gary stated that the source water document did contain a public comment section. The EPA pesticide management plan does not require such a section.

Legislators will be provided an opportunity to have input into the rules. It was asked if EPA would provide public comment into the Plan, and Garrett stated that he didn't know if they had to that. They will have to have all agencies signatures on the initial draft plan prior to it going out for public hearing.

Committee members suggested that 02. be modified as follows:

02. The department shall conduct monitoring programs in compliance with the department's EPA approved Quality Management Plan (QMP) and applicable Quality Assurance Project Plan (QAPP).

Gary noted that he looked at the 1996 rule language re. 03. There are no reporting requirements in the generic Plan but they are required for specific plans. The last sentence in 03. was also dropped and it was noted that maybe we will have to have MOA's with other agencies.

Evaluation and Use of Monitoring Results

They also asked how compliance would be determined, through the pesticide specific management plan, EPA label or separate rule making? The EDMS is already in the Plan. The committee then recommended that this subsection be kept more generic.

Committee members suggested changing 02. b. to:

02. b. determining compliance with departmental rules authorized by (XXXX Section on Creating Chemical Specific PMPs) (XXXX Enforcement Mechanisms) such as the ISDA Pesticide Penalty Matrix. Gary will research penalty matrix information and revise 02. b.

Committee members commented that it would be difficult to monitor the success of this rule. It was also noted that reports would only be required every 2 years rather than two times a year.

03. The department shall evaluate the results of monitoring programs ~~and the success of this rule~~ and produce ~~semiannual~~ biennial reports.

The committee recommended that 04. be deleted or moved to the Title & Scope section.

Chemical Specific PMP's

This section goes into detail about Chemical Specific PMP's and when they would be created. If EPA decides to restrict the use of a pesticide, the state will have to write a chemical specific plan to address that. They might not even have to have a plan unless a user group wants to use a specific pesticide at some point.

Committee members discussed 01. b. and suggested that it be revised to the following. They also questioned if this issue is addressed in the generic PMP.

01. b. EPA restricts sale ~~or use~~ in the state, or otherwise initiates action against a chemical because of ground water concerns for a pesticide that is used in the state unless such plan is not deemed necessary based on current or projected use.

04. The department shall prioritize ~~preparation~~ development of chemical specific management plans (PMPs) based on:

04.b. potential public health ~~concerns~~ impacts.

There was some discussion on changing this to public health impacts and how those could be determined. Impacts are listed in Wisconsin's but too much detail could tie the state's hands. Gary also stated that he needs to re-write 02. a.-i. to make sure it follows the generic PMP guidelines, and committee members advised not to make this section too restrictive—make the resolution commensurate with the problem (i.e. develop a plan as needed and as in-depth as needed). If EPA itemizes a pesticide of concern and there are no detections of that pesticide in Idaho, this section would need to reflect that Idaho would not have to write a chemical specific plan to address it.

Management plans, rulemaking, and review.

Committee members suggested that 02. be revised so that if only minor changes are needed, new rulemaking would not have to take place—only significant modifications to plans should undergo rule-making.

Gary provided copies of the Wisconsin Groundwater Protection Standards, Pesticide Product Restrictions, and Groundwater Protection Program and requested committee members to review them.

The Policy committee is scheduled to meet on February 17.

The meeting adjourned at 4:00 pm.